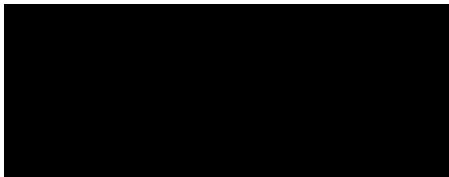




U.S. Citizenship
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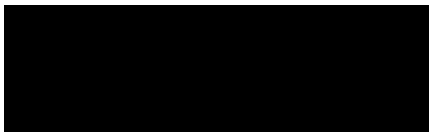


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 27 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying documents related to
prevent unauthorized
invasion of privacy

PUBLIC COPY

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner describes itself as a “missionary ministry for global outreach.” It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services in the vocation of a religious brother. The director determined that the petitioner had not established that it is a qualifying tax-exempt religious organization.

On appeal, counsel argues that the director overlooked important evidence regarding the petitioner’s tax-exempt status.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(2) defines a “bona fide nonprofit religious organization in the United States” as an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the Service that it would be eligible therefor if it had applied for tax exempt status.

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

- (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate

cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

According to documentation from the Internal Revenue Service, the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the Code), which pertains to churches, but rather under section 170(b)(1)(A)(vi) of the Code. The director denied the petition, stating "[t]his section is not the one relating to religious organizations. . . . Therefore, the petitioner is not tax-exempt as a religious organization and is ineligible for special immigrant classification on any alien employees."

On appeal, counsel argues that the director failed to give full consideration to the petitioner's classification under section 170(b)(1)(A)(vi). That section pertains to publicly supported organizations as described in section 170(c)(2) of the Code, "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes," or for other specified purposes. This section refers in part to religious organizations, but to many types of secular organizations as well.

Clearly, an organization that qualifies for tax exemption as a publicly supported organization under section 170(b)(1)(A)(vi) of the Code can be either religious or non-religious. The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) of the Code derives primarily from its religious character, rather than from its status as a publicly supported charitable and/or educational institution. The organization can establish this by submitting documentation which establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The documentation should also establish that the organization, when it obtained its tax exemption, represented itself to the Internal Revenue Service as a religious organization. See Memorandum from [REDACTED] Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003). In that memo, [REDACTED] lists four types of information required to establish the religious purpose of a tax-exempt entity:

- (1) A properly completed IRS Form 1023;
- (2) A properly completed Schedule A supplement, if applicable;
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The petitioner has provided documentation that conforms to the above list. The petitioner has submitted a copy of its Form 1023 Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. Under Part II, Activities and Operational Information, the petitioner has stated:

The purpose of [the petitioning organization] is to bring about the realization of the Fatherhood of God and the sonship and daughtership and consequent brotherhood and sisterhood of all men and women, which is personally realized in loving ministry and social service. This purpose is implemented through its objectives: (a) to establish a church and a

spiritual educational organization; (b) to establish, organize, and support a religious order of committed believers; (c) to implement divine administration on a human level; (d) to establish and support missionary training and educational programs globally; (e) to disseminate epochal revelation; (f) to support humanitarian efforts contributing to a more compassionate and sustainable civilization; (g) to promote the unity of expanded spiritual consciousness and individual spiritual ascension, as well as health and well being . . . ; (h) to expand and develop [the petitioner's] ministry programs from time to time to further these purposes and objectives.

The organization's bylaws are also religious in tone, as are fliers reproduced in the record. Examined in its totality, it is apparent that the petitioner stressed its religious character when it applied for tax-exempt status. Because the Internal Revenue Service approved the exemption, the inference is that the exemption derives from the organization's religious character. Therefore, the petitioner is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. The petitioner has overcome the only stated ground for denial set forth in the director's decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.